Supreme Court, U.S.
FILED

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No

In The

Supreme Court of the United States

Catherine Satre-Buisson
&
Stephane Roux
Petitioners

v.

The Department of Homeland Security
Respondent

On Petition for Writ of Certiorari
To the Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

Catherine Satre-Buisson
Stephane Roux
La Passerelle
Chaudon-Norante
04330 - Barreme, France
Tel: 33-6-89-33-55-23

QUESTIONS PRESENTED

1. Whether Department of Homeland Security (DHS) violated the Fourth Amendment rights of two individuals when (a) they secured the Petitioners' premise and refused to allow him or her to re-enter without officer accompaniment, (b) searched without a warrant the Petitioners' bedroom and illegally seizure of documents which should have been used by Petitioners as important evidence to show their legal status and (c) they did not read Petitioners' Miranda rights.

2. Does the 9th Circuit court erred to recognize that the Respondent violated the fundamental nature of Petitioners' due process and liberty interest to be free from coercion, duress or inducement, and the right to counsel. (Fifth Amendment and Sixth Amendment).

PARTIES TO THE PROCEEDING

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

Questions Presented..... i

Parties to the Proceeding.....ii

Tables of Contents.....iii

Tables of Authorities.....iv

Statement of Jurisdiction.....1

Constitutional and Statutory Provisions involved.....1

Statement of the Case.....2

Reasons for Granting the Right.....11

Conclusion.....12

TABLE OF AUTHORITIES

CASES

Demore v. Kim 01-491.....10,11

Fellers, John v. U.S 02-6320.....7

Florida v. Thomas, Robert A. 00-0391.....4,5

Illinois v. McArthur 99-1132.....4,5

Saucier v. Katz 99-1977.....4,5

Montilla v. INS (2nd Cir1991).....6,7

Matter of Lam, Int.Dec.2157 (BIA 1972).....8,10

Zadvydas v. Davis 99-7791.....6,10,11

Ashcroft v. Ma, Kim 00-0038.....6,10,11

INS v. Lopez-Mendosa 468 U.S.1032(1984).....8,9

Matter of Sendoval 468 U.S.1032(1984).....8,9

Woodby v. INS. 385 U.S. 276,286(1966).....9

Matter of Garcia-Flores
17 I&N Dec.325(BIA1980).....6

Miranda v. Arizona 384 U.S.436(1996).....6

Shaughnessy v. Mezei 345 U.S.206(1953).....6,7

Plyler v. Doe 457U.S.202(1982).....6,7,11

Balasubramanrim v. INS
143 F.3d 157(3rd Cir 1998).....8

U.S. v. Zacarias, moussaoui 01-455-A.....6,7

Orantes-Hernandez v. Thornburgh
919 F.2d 549,554(9th Cir.1989).....6,7

Rios-Berrios v. INS
776 F.2d 859,862(9th Cir.1985).....6,7

Castro O'Ryan v. INS
847 F.2d 1307,1312-13(9th Cir.1987).....6,7

Baires v. INS
856 F.2d 89,90-91(9th Cir.1988).....6,7

U.S. v. Caceres 440 U.S.741,749(1979).....13

Matter of short 20 I&N Dec.136(BIA1989).....9

STATUTES

8 U.S.C 1362.....6

8 C.F.R. 1356(c).....5

8 C.F.R. 1357(a)(3).....5

I&NA 240(c)(3)(B).....9

8 C.F.R. 1240.8(a).....9

8 C.F.R. 295(b).....6,7

8 C.F.R. 292.5(b).....7

8 C.F.R. 1240.9(c).....9

8 C.F.R. 1101.(a)(42).....3

I&NA 101(a)(42).....3

8 C.F.R. 208(a).....3,8,12

8 C.F.R. 242.B(a)(1)(E).....6,7

8 U.S.C. 1229a(c)(3)(B).....8,9,10

8 C.F.R. 3.41(a).....8,9,10

LEGISLATIVE MATERIAL

DOJ Oversight: Preserving our freedoms
while defending against terrorism: Hearings
before the Senate Comm. On the judiciary,
108th Cong. (Dec. 4, 2001)
(testimony of Gerald H. Goldstein) available at
http://judiciary.senate.gov/testimony.cfm?id=
128&wit_id=82.....13

MISCELLANEOUS

Know Your Rights
(National Lawyers Guild).....5,6,7,11

Amnesty International,
Amnesty International's concerns regarding
Post September 11 detentions in the USA

(march 2002) available at
www.amnesty-usa.org/usacrisis/9.11.
detention2.pdf.....11

Detention Policies: Due Process or
for a Change (Eryn McGary)
Medill News Service.....6,7,10,11

STATEMENT OF JURISDICTION

The Decision of the court of appeals was issued November 07, 2003. This petition is timely filed pursuant to SUP.CT. R.13.1. The Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED

Petitioners intend to rely upon the following constitutional provisions, treaties, statutes, rules, ordinances and regulations:

U.S. Const. Amend. IV

"The right of the people t o be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. Amend. V

"No person shall,....., be deprived of life, liberty or property, without due process of law."

U.S. Const. Amend. VI

"....., and to have the assistance of counsel for his defense".

U.S. Const. Amend. XIV

"....., nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioners will be referred to by name or as the Petitioner (s). Department of Homeland Security (DHS) will be referred to by name or as the Respondent or the Government.

Main Petitioner, Catherine Satre-Buisson, has been in the United-States since she was legally admitted on February 4th 2000 under the Visa Waiver Pilot Program. Her husband, Stephane Roux, entered the United-States on February 4th 2000 as well, under a H3 visa. On September 2000 she filed an affirmative request for asylum in the United States based on religious persecution in France. On November 13th, 2000 the Department of Homeland Security (Former Immigration and Naturalization Service) referred her asylum case to an Immigration Judge (IJ), entitled to an "only hearing" without removal proceedings or deportation, because an Immigration Judge has exclusive jurisdiction over any application filed on or after April 1st, 1997 of an alien who has been admitted to the United-States pursuant the Visa Waiver Pilot Program under section 217 of the act (I&NA). She elected to proceed Pro Se after her attorney died one week before her hearing.
She was fully informed of her right to be represented in these proceeding and voluntarily waived that right.

On July 13th, 2001 the oral decision of the Immigration Judge granted her asylum in the United-States following a twenty-two pages statement. On August 02nd, 2001 the Office of the District Counsel in San Francisco filed a frivolous appeal, as already promised during the first court hearing. On June 13th, 2003 the Board of Immigration Appeals summarily sustained the Service's appeal. On July 09th, 2003 the main Petitioner filed a timely "Motion to Reconsider" with the BIA. On September 17th, 2003 she received an order of deportation from the Department of Homeland Security. On September 30th, 2003, she filed a "Petition for Review" and a "Motion for Stay of Deportation" with the 9th Circuit Court of appeals.

At 7:55 am, on October 15th 2003, Petitioners were arrested by the DHS when exited their home in a private complex apartments. INS officers without warning or speaking to Catherine Satre-Buisson, grabbed her harms, sized her from behind then handcuffed her without identified themselves. Two officers threw her on the ground, dragged her and violently tossed her into the back of their car. The Petitioner would like to point out the facts that the two officers cannot have an objectively reasonable belief that the force used was necessary (entitled the officers to qualify immunity) when no reasonable officers could have believed that the force used was necessary (establishing a Fourth Amendment violation).

Petitioner's alleged behavior (female, tiny body, unarmed) did not appear to pass the legal test for excessive force. She was not an immediate threat to the safety of the officers or others. Petitioner did not

actively attempt to resist or flee but she was shocked and panicked. The officers involved in this arrest never asked the Petitioner to identify herself. The third officer left behind ordered Stephane Roux, who was walking in the complex apartment, to identify himself by threatening to shoot him if he had refused.

Even if the Petitioner gave the proof of his legal status (ID card, work authorization,...), he was handcuffed. At that time the officer secured the Petitioner's premise and refused to allow him to re-enter alone. Insisting to show more evidence of his legal status, the Petitioner escorted by two officers re-entered the home and went to the bedroom where Respondent started a warrantless search. Respondent illegally seizured documents which could have been used by both Petitioners as important evidence. Specifically, 8 C.F.R. 1356(c) and 8 C.F.R. 1357(a)(3) prohibit the INS officers to search dwellings. Because there were no exigent circumstances to justify such interference with both Petitioners' possessery interest (seizure) and privacy interest (search), the INS officers conduct was certainly an unreasonable seizure and probably an unreasonable search.

By conducting illegal search and seizure, Respondent inflicted irreparable damage to the due process rights of Petitioners because the documents illegally seized were subsequently suppressed as important evidence. During this search, the officers checked roughly a sixty-five years old insulin-dependant female (Catherine Satre-Buisson's mother) who was in the country for a short period of time for health purpose (heart and kidney disease). She had to show her passport and her airline ticket and was left alone without regard to her welfare after she had already collapsed. Then, Stephane Roux was dragged, pushed

and tossed into the back of the car. At that time none of the officers had a slice idea of the relationship between both aliens.

Transported to the Sacramento District Office (CA), both Petitioners were going to be detained in a separate cell without any explanation for long hours. Petitioners' requests to contact an attorney, the Board of Immigration Appeals (BIA) and the 9th Circuit Court were denied by the officers. Between the time that Petitioners were fingerprinted and sent to jail, two of the officers who had made earlier the arrest, told them that their case was already sealed: "You are going to be deported". These officers acted in such a way as to form a threatening presence and used coercive language.

At that particular time the Petitioners should have been entitled to due process following the Fifth Amendment to the US Constitution. In 1953 the Supreme Court decided that even those who enter the country legally or illegally are entitled to due process before being deported. Due process had required that the Government gave notice to the Petitioners of the allegations against them and the charges that rendered the Petitioners deportable so that the Petitioners may have prepared a defense. But it never happened which had made the proceeding of these rules manifestly unfair and had violated the due process.

Seven hours have already elapsed and the Miranda rights have not been read to the Petitioners. The Miranda warning, the commonly recited refrain that begins, "you have the right to remain silent..." (Miranda v. Arizona)", derives from the Fifth Amendment protection against self incrimination and the Sixth Amendment right to the representation by an

attorney. The only right that had both Petitioners at that time was to "keep their mouth shut" as suggested by officers or hard punishment was waiting for them.

Hard punishment started right away for the main Petitioner Catherine Satre-Buisson, when arriving at the Yuba County jail, she was sent to a freezing solitary confinement for twelve hours wearing only an "hospital gown" with no underwear. She was checked every fifteen minutes either by male or female officers. The next eight hours, moved to another cell, she was exposed to anybody "regard" and had to hide her nudity. She did not get any food, drink or medicine for her asthma during this period. In addition, during her seven weeks of detention, Catherine Satre-Buisson's medical treatment was dangerously substandard even more, after a hunger strike. She was denied the right to religious practice.

Five days later, Petitioners went back to the Sacramento District Office, where they met the same officers who arrested them. Significantly 8 C.F.R. 287.3(d) provide DHS with 48 hours from the time of arrest to make a formal custody determination and issue the NTA and warrant of arrest, absent an emergency or extraordinary circumstances. 8 C.F.R 287.3(a) requires the arresting officer be someone other than the interviewing officer unless arranging for another officer to conduct the interview causes unnecessary delay. In addition, Petitioners must be told of the reasons for arrest, notified of the right to counsel, provided with information regarding free legal services, and be advised that any statements may be used against them in proceedings. 8 C.F.R 287.3(c). Such violations implicate protected

constitutional and statutory rights and violate due process (Fifth Amendment). The DHS unable to give notice to the Petitioners of the allegations against them and the charges that render the Petitioners deportable (case pending with the BIA, motion for stay of removal) built new evidences. Petitioners were led to believe that deportation was inevitable, that they had no rights whatsoever and were forced to sign unexplained documents. Several times Petitioners required the presence of a translator and an attorney with no success. Petitioners feared disclosing information (asylum request) that placed them in jeopardy, if they had to go back to their native country, when they were ordered to speak with the French Consulate in San Francisco, after Respondent had already discussed with them. Petitioners were wrongly accused to be Visa Waiver Pilot Program violators under section 217 of the act (I&NA), meaning that they have overstayed the period allowed for a non-immigrant alien under the due act.

The arrest of the Petitioners was not based on the BIA final decision because the DHS had to come with new evidence to support their allegations. The main Petitioner was accused by the Department of Homeland Security of violating her Visa Waiver Pilot Program in 2002 after being wrongfully accused to enter the United-States in December 2001. But during this very same period, her (French) passport had expired and she was left without identity until mid-2002. It was impossible for her to use either a domestic or an international airline with no paperwork and ridiculous after the September 11 terrorist attack. As far as her husband was concerned the DHS claimed that he had overstayed his Visa Waiver after he last entered the United-States in February 2000,

when he was under a valid H3 visa.

Because Petitioners were charged with deportability, alienage should have been proved by "clear and unequivocal and convincing evidence...". Due process requires that statements used to support deportability be made voluntary. The main Petitioner had to write the withdrawal of her 9th Circuit appeal, on INS officers' order and threats.

In construing whether Petitioners' offense sustained deportability, the statute under which the Petitioners were allegedly deportable should have been taken at its minimum. Because the statute allegedly violated was an ambiguous or divisible statute, it was necessary to look to the record of conviction and to other documents admissible as evidence (expired passports) in proving a criminal conviction to determine the specific offense for which the Petitioners were convicted[1].

Although the DHS may use the record of conviction to prove the specific statutory section under which a person is deportable, the Respondent was limited to the record of conviction and may have not inquired beyond the record of conviction to establish deportability.

Petitioners argue that their actions during their special interview were the result of coercion, duress or inducement, which made to believe that they had no rights, that they could not communicate with counsel, that they could be detained without explanation,

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[1] INA 240(c)(3)(B); 8.U.S.C. 1229a(c)(3)(B); 8C.F.R. 3.41(a); see also Matter of Short, supra note xxiii; In re Rafael Espinoza-Gonzales, Int. Dec.3402(BIA 1989); Matter of Sweetser, Int.Dec.3390(BIA 199).

threaten of criminal and civil penalties or deportation for failure to comply, promises, or interferences with any attempt to exercise their rights[2].

The 9th Circuit Court of Appeals aware of Petitioner's harsh treatment erred to recognize that Petitioners suffered coercion, duress or inducement and that the unlawful arrest and detention indicated "malicious prosecution" by Respondent. Black's Law dictionary defines malicious prosecution as one, which "begun in malice without probable cause to believe the charges can be sustained".

The unlawful arrest of Petitioners represented an "intentional doing of wrongful act, without just cause or excuse, with an intent to inflict an injury". Thus, the arrest and the deprivation of liberty in such a way represent entrapment and, constitute clear cases of malicious arrest and malicious prosecution. (petition of writ of habeas corpus). Petitioners suggest that it would be completely irrational to believe that the District Counsel of the San Francisco DHS Office, the Assistant Field Officer and special agents who participated in the "investigation" and the arrest of the Petitioners could be all so ignorant about the INS procedures that they did not understand unlawful

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[2] see, generally, Matter of Garcia, 17 I&N dec.319(BIA 1980) (due process requires excluding admissions from the record where Respondent was led to believe that deportation was inevitable, that he had no rights whatsoever, that he could not communicate with his attorney, and that he could be detained without explanation of why he was in custody); Bong Youn Choy v. Barber, 279F.2d at 645-47 (vacating deportation order based on coerced statement by sleep-deprived respondent where INS threatened perjury charges and deportation).

character of the arrest of Petitioners and multiple violations of law and procedures they committed.

Petitioners were not subject to mandatory detention due to criminal or terrorist ground specified in INA 236(c)(1), so they were entitled to get an immigration court and bond hearing. DHS refused bond without showing the Petitioners' dangerousness and the risk they could cause to the community by fair procedures, and were called "flight risk". To justify this scenario, Respondent should have demonstrated that Petitioners were "a risk of absconding"; but how could it be? When Petitioners have always informed the INS where they lived for 6 ½ years in the Sacramento area (same address).

Petitioners claim as Commercial/Instructor Pilot, they were subject to special scrutiny and harsh treatment following September 11, like the Arab, Muslim and South Asian communities[3].
Petitioners' detention violated their constitutional due process rights under the Fifth and the Fourteenth amendments that prohibit the government from unfairly or arbitrarily depriving a person of life, liberty or property, and insure the "equal protection" under the law (this means that people in similar situations should be treated equally under law).

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[3] See the Report from the Office of Inspector General issued in June 2003, entitled The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks (http://www.usdoj.gov/oig/special/03-06/index.htm).

REASONS FOR GRANTING THE RIGHT

Since September 11, the United-States have behave as a country of despotism, arrested people and, without accusation or trial, hurrying them to jail before been deported. Many people began to question whether detainees were being held based primarily on their activities or origin. Many of these detainees were not charged for days or weeks and were held in harsh conditions without bail, even when there was no evidence to justify withholding bail. And, when been deported, nobody realized the hardship that most of these innocent aliens suffered. Some will have to live a well founded fear of new persecutions, after fleeing past persecution by requesting asylum to United-States. It can hardly be doubted, in the wake of September 11 that the Government has weighty to try to prevent future terrorist attacks and to apprehend and punish those responsible for past attacks. However, many harsh and dramatic changes have occurred due to both alteration in internal policies and regulations of the DHS and Department of Justice. But neither can it be doubted that times of crisis and fear demand vigilance from citizens and their courts to assure that the counter-measures adopted by the executive are consistent with your fundamental values and constitutional principles.

Here, petitioners strongly affirm that their arrest was the consequence of a deliberate dilatory action, from citizen or not, allegations verified by creating false or misleading evidence by the DHS. This is not the first time the government has reacted to a perceived threat with massive arrests of persons

to a perceived threat with massive arrests of persons of foreign origin. (The Palmer Raids-1919, a reaction to the "Red Scare").

DHS' ruling was an "intrusive and erroneous exercise" of its own power (dilatory). Individual is entitled to rely on the regulations, then the agency is bound by them, and violation of them is reversible error. Though Congress has absolute authority over immigration regulation, the implantation of their laws is very much at the mercy of the Constitution.
As the Supreme Court has stated, "a court's duty to enforce an agency regulation is most evident when compliance with the regulation is mandated by the Constitution or federal law". It is a ringing endorsement of the power of the courts to supervise the DHS and make sure that the DHS is not getting the law wrong.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Catherine Satre-Buisson
Petitioner Pro Se

Stephane Roux
Petitioner Pro Se

Date: January 29, 2004